

Pratap Narain Mathur Vs. Mcd and ors.

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Court : Delhi

Decided On : Jan-28-2014

Judge : Manmohan Singh

Appellant : Pratap Narain Mathur

Respondent : Mcd and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Order delivered on: January 28, 2014 + C.R.P. No.12/2011 PRATAP NARAIN MATHUR Petitioner Through Mr.Ravindra Dayal, Adv. versus MCD & ORS Through Respondents Mr.Kuldeep Singh Rathor, Adv. for Mr.Ajay Arora, Adv. for R-1/MCD. Mr.Rohit Gandhi, Adv. with Ms.Manpreet Kaur, Adv. for R-3. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By way of the present petition under Section 115 CPC, the petitioner has assailed the order dated 8th March 2010 passed by the learned Trial Court in a suit for declaration, permanent and mandatory injunctions and damages (hereinafter referred to as the said suit) filed by the petitioner in respect of a plot bearing No.221, Bank Enclave, near Laxmi Nagar, Delhi110092 (hereinafter referred to as the suit property) whereby the learned Sr. Civil Judge has allowed the application of the respondent No.3 under Section 10 CPC and stayed the suit.

2. The brief facts are that prior to present proceeding the some very petitioner herein had filed a suit bearing No.463/86 (renumbered as Suit No.72/2006) titled as Pratap Narain Mathur vs. Krishan Kumar and Anr. for possession and injunction with respect to plot bearing No.221, Bank Enclave, Shakarpur, Delhi.

3. The suit was dismissed by the learned Senior Civil Judge on 20 th July, 2009 holding that the respondent No.3 herein (defendant No.2 in Suit No.72/2006) is the lawful owner of the said property and the petitioner has no right, title and interest in the said property and therefore, is not entitled to the relief prayed for in the suit.

4. The petitioner thereafter filed an appeal against the said judgment being appeal No.82/2009 and the same is still pending adjudication.

5. The petitioner during the pendency of the abovenoted suit filed another suit on 17th February, 1998 bearing Suit No.37/1998 (renumbered as Suit No.72/2006) against the MCD and DDA. The respondent No.3 herein was subsequently impleaded in the said suit as defendant No.3.

6. Both the suits filed by the petitioner were with respect to the same property and the issues raised in both suits were similar and inter related and similar reliefs were sought. It is alleged by the respondent No.3 that the petitioner had just changed the wordings of the relief sought whereas in result they were same reliefs which were rejected in the previously instituted suit.

7. The respondent No.3 after being impleaded in the suit filed an application under Section 10 read with Section 151 CPC for stay of the suit as the said reliefs have been denied in the previously instituted suit and the appeal was pending adjudication and the matter was res sub judice.

8. By the impugned order, the learned Senior Civil Judge allowed the application of the respondent No.3 under Section 10 CPC and stayed the suit.

9. The petitioner has filed the present revision petition challenging the order dated 8th March, 2010 passed by the learned Senior Civil Judge wherein the learned Sr. Civil Judge has stayed the suit under Section 10 CPC.

10. Accordingly, the learned trial Court stayed the said suit under Section 10 CPC till the disposal of the appeal in the earlier suit, vide order dated 8th March 2010. Aggrieved thereof, the petitioner filed the present petition on the grounds mainly that the same is perverse, mala fide, capricious, malicious, illegal, null and void. It is stated that the impugned order was passed after more than a period of 3 years since the reply to the said application was filed by the petitioner and written notes of arguments were supplied and accordingly, the same is perverse and contrary to the law laid down by the Supreme Court that an order given after more than two months of reserving the same is illegal and should be set aside.

11. It is also stated in the petition that besides other things, the parties in both the suits are not the same since in the previous suit, the parties were Kishan Kumar and Raj Jain and in the said suit, the parties originally were MCD and DDA and that Raj Jain was impleaded only later as defendant no.3 on his application being allowed by the Court.

12. The finding of the Sr. Civil Judge is that the reliefs sought in the subsequent suit are directly and substantially connected with the reliefs in the previous suit and the additional reliefs are dependent upon the reliefs which have already been rejected.

13. The relevant portion of the impugned order is reproduced herein below for reference:

In the present case, the plaintiff has filed the suit for possession which has been dismissed by the court, but an appeal has been preferred against the same which is still pending. Though the case has been decided against the plaintiff, yet appeal is continuation of trial and it cannot be said that the earlier suit has been decided completely. The present is suit for declaration, permanent and mandatory injunctions thereby declaring the building plan in respect of suit property as illegal, null and void and defendants be restrained not to carry out by any unauthorized construction in the suit property and further the construction of defendant be demolished and further to revoke the transfer of plot in the name of the plaintiff and to cancel the sanctioned plan along with damages. The relief sought by the plaintiff is directly involved with the relief of possession in the suit property as if the

plaintiff becomes the owner of the suit property, only then he can seek the cancellations/revocation of transfer of the plot in the name of the plaintiff who has claimed to be the owner of the suit property. Even the sanctioned plan only can be challenged by the plaintiff if the plaintiff is the owner of the suit property. Further the plaintiff only get the relief of declaration against the sanctioned plan and for demolition if he is the owner of the suit property and without getting it declared null and void, the relief of the plaintiff cannot be granted. As such, the relief sought in the earlier suit is directly and substantially connected to this case and this relief depends upon the earlier suit. Since the dispute of ownership is involved in the present case are inter related, accordingly the subsequent suit is liable to be stayed under Section 10 of CPC. This suit is hereby stayed under Section 10 CPC and be revived after disposal of the appeal in the present case.

14. By the impugned order the learned Sr. Civil Judge has merely stayed the proceedings in the previously instituted suit. Moreover it is a settled proposition of law that if an application under Section 10 is allowed then the suit would not be dismissed. (See *Dropati Devi & Ors., vs. Jaswant Singh & Anr.*, 2009 (157) DLT306 at pr. 6). Thus, as the suit has not been disposed off the revision petition will not be maintainable.

15. Further, the period of limitation for filing a revision petition prescribed in Article 131 of the Schedule of the Limitation Act is 90 days. In the present case, the impugned order is dated 8th March, 2010 whereas the present petition has been filed only in January 2011 i.e. after an exorbitant delay of around 8 months. No cogent or tenable reason has been provided by the petitioner to justify the said delay and excuses given like the revision petition was by mistake filed in the trial court instead of the High Court are prima facie false and untenable.

16. If the subject matter of the two suits is the same and the parties are the same then Section 10 of the CPC would be applicable and the subsequent suit is liable to be stayed till the final disposal of the previously instituted suit. In *Metso Minerals (New Delhi) Pvt. Ltd. vs. Satyam Shankaranarayan JV*, 2007 (97) DRJ558 this Court held as under:

9. The focal point for consideration would be as to whether the scope of inquiry in the two proceedings is the same, in order to find out as to whether the subject matter of the controversy is substantially the same in the two suits. Matter in issue does not mean any matter in issue in the suit but has reference to the entire subject matter in controversy. In order to find out as to whether the scope of inquiry or the matter in issue is same, the test is as to whether the decision in one suit would non suit the other suit. Other test of applicability is as to whether final decision in the previous suit would operate as res judicata in the subsequent suit. Likewise, the expression same parties occurring in Section 10 has been interpreted to mean "the parties as between whom the matter substantially in issue has arisen and has to be decided. It is not necessary that all the parties on either side should be the same in both the suits; it is enough if there is a substantial identity of the parties.

Furthermore, in *Dropati Devi & Ors. vs. Jaswant Singh & Anr.*, 2009 (157) DLT306 this court held that merely because additional reliefs are sought, while the basis reliefs remains the same, the second suit cannot be proceeded and the same is liable to be stayed under Section 10 CPC. 6 The suit of the respondent, if application under Section 10 is allowed, would not to be dismissed but only stayed. The respondent would be entitled to claim mesne profits only if the respondent is held entitled to a share in the property is the subject matter of the first suit filed before this court. I, therefore, consider that merely because an additional relief of mesne profits and partition has been sought, while the basic relief claimed in the both the suits qua the property in question is the share in the property, the second suit cannot be allowed to be proceeded simultaneously. The issue of mesne profits and partition cannot be decided without first deciding the status i.e. as to who is the owner of the property in question and whether the respondent has any locus standi qua the property in question. Once these issues are settled by this Court, the suit of the plaintiff, if stayed, would get revived and the plaintiff would be able to recover the mesne profits and his share if it is so held by this Court. I, therefore, consider that since the controversy and subject matter in the two suits is same, parties are the same, property in question is also the same, issues framed are also more or less same, the suit before the Court of ADJ is liable to be stayed.

17. Thus, the learned Senior Civil Judge has correctly stayed the suit under Section 10 CPC. The present matter has no substance on merit and is also not maintainable.

18. The legal position as it stands today has been well-settled since the Supreme Court ruling of Shiv Shakti Co-operative Housing Society, Nagpur v. M/s. Swaraj Developers, AIR 2003 SC2434 The Apex Court analyzed the position both prior as well as post Amendment Acts of 1976 and 1999 and very well reiterated the difference between an appeal and a revision in the following paragraphs:

13. It is fairly well-settled position in law that the right of appeal is a substantive right. But there is no substantive right in making an application under Section 115.

15. .Language of Sections 96 and 100 of the Code which deal with appeals compared with Section 115 of the Code. While in the former two provisions specifically provide for right to appeal, the same is not the position vis--vis Section 115. It does not speak of an application being made by a person aggrieved by an order of subordinate court. As noted above, it is a source of power of the High Court to have effective control on the functioning of the subordinate courts by exercising supervisory power.

The Court summed up the present legal position in the following paragraphs:

14. .Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right.

32. .A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. Suit on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent

is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2) (i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.

33. Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision under Section 115 of the Code.

19. The present petition in view of reasons given is accordingly dismissed, with cost of ₹10,000/-. (MANMOHAN SINGH) JUDGE JANUARY 28 2014

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